IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.86 OF 2007
IN
WRIT PETITION NO.5287 OF 2002

Shakuntala Narayanrao Kulkarni & Ors. ...Appellants
V/s.
Prabhavati Maruti Kumthekar ...Respondent

Mr.A.A. Deshpande h/f. P.B. Shaligram for the Appellants.

CORAM : J.N. PATEL &
A.A. SAYED, JJ.
DATE : 17TH APRIL, 2007.

P.C. :

1. This Letters Patent Appeal is filed by the Appellants/landlords. The Appellants/landlords' suit for eviction of the Respondent/tenant came to be decreed by the Trial Court on four counts viz.: (1) the Respondent acquiring alternate accommodation, (2) Non-user, (3) Bonafide requirement & (4) premises required to be demolished. The 1st Appellate Court of Additional District Judge allowed the Appeal of the Respondent/tenant dismissing the suit thereby and reversed the findings and order of the learned Trial Judge. The Appellants/landlords challenged the order of the 1st Appellate Court by way of Writ Petition before the Single Bench which was dismissed and which order is now challenged in the above Letters Patent Appeal.

2. The 1st Appellate Court in para 21 of its judgment held that the findings of the Trial Court are contrary to the evidence on record in so far as the ground of alternate accommodation i.e. Section 13(1)(L) of the Bombay Rent Act is concerned and further held that the Appellants/landlords have failed to prove the ground of acquiring alternate suitable accommodation. The 1st Appellate Court has come to conclusion that the Trial Court was wrong in holding that the suit premises was let out for the purpose of residence. The Appellants/landlady has admitted in cross-examination that she has no knowledge of the purpose of letting and that her husband was looking after the suit property. In para 23 and 24 of the judgment, the 1st Appellate Court has further held that the Appellants/landlords are not entitled to get possession of the suit premises on the ground of non-user as the pleading and evidence of the Plaintiffs/Appellants suffered from many infirmities and that the Appellants/landlords failed to prove or discharge their initial burden that the suit premises was given for the purpose of residence. The 1st Appellate Court has further observed that the Appellants/landlords have admitted that except the bare words there is no evidence for proving non-user and held that the ground under Section 13(1)(L) does not

survive.

4. In so far as the issue of bonafide requirement is concerned, the same is discussed from para 28 onwards and the 1st Appellate Court has held that the Appellants/landlords are in possession of 7 rooms and that if the Defendant/Respondent is evicted, the Defendant/Respondent would suffer greater hardship and irreparable loss and further observed that the Plaintiff is in possession of more than sufficient accommodation and her claim for possession is neither reasonable nor bonafide. In para 35 of the judgment, the 1st Appellate Court has discussed the issue of demolition/reconstruction and the 1st Appellate Court has come to the conclusion that the dangerous portion of the suit property is already demolished and Section 13(1)(hhh) is not applicable. The 1st Appellate Court has come to the conclusion after appreciation of the evidence that the Trial Court had not applied its mind and the Appellants/landlords are not entitled to decree of possession of the suit premises.

5. The learned Single Judge of this Court has also examined the evidence and found that no case is made out by the Appellants/landlords for interference and has concurred with the findings of the 1st Appellate Court and held that the 1st Appellate Court was justified in dismissing the suit and allowing the

Appeal.

6. We do not find that the impugned order suffers from any error or illegality. Therefore, the Letters Patent Appeal stands dismissed.

[J.N. PATEL, J.]

[A.A. SAYED, J.]